Per G.S. Singhvi, C.J.

This appeal is directed against order dated 06-10-2005 passed by the learned Single Judge in W.P. No.21782 of 2005 whereby he rejected the appellant's challenge to order dated 25-10-2002 passed by Commissioner, Kurnool Municipality, Kurnool District (hereinafter described as 'the Commissioner') in compliance of the direction given by this Court in W.P. No.11080 of 2002 decided on 25-06-2002.

A perusal of the record shows that the writ petition filed by the appellant for issuance of a writ in the nature of mandamus to the Commissioner for removing the alleged encroachment made by respondent No.3 on the public road was disposed of by the learned Single Judge on 25-06-2002 with a direction to the concerned officer to decide representations dated 14-07-2001 and 28-07-2001 and to remove the encroachment, if any, made on the public road.

In compliance of the direction given by this Court, Commissioner considered the representations made by the appellant and rejected the same by recording the following reasons:

> "In this connection, it is hereby informed that the General Secretary, Bhagawan Bala Saibaba Seva Samithi, Kurnool has applied to the then Kurnool Municipality in the year 1989 along with plans proposal for construction of Prarthana Mandiram in Sy.No.33 of Kurnool (V) near Sri Saibaba Temple, 64 Peta, Kurnool.
> As per Rule 5(3) of building rules Andhra Pradesh Municipal Act, 1965 the same was submitted to the District Collector, Kurnool after obtaining openion (Sic. opinion) of the Deputy Superintendent of Police and Revenue Divisional Officer, Kurnnol. The District Collector in his proceedings D.Dis.No.1148/92, Dt:20-07-1992 accorded "No Objection" for taking up the Construction of prayer hall in Sy.No.33 subject to fulfillment of conditions of the Director of Town and Country Planning, A.P., Hyderabad. Accordingly this office forwarded the proposals along with plans and technical report to the Director of Town and Country Planning, A.P., Hyderabad for necessary approval.
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> The Director of Town and Country Planning, A.P., Hyderabad

in Dis.No.6186/93/D3, Dt:29-05-1993 accorded permission for construction of Prarthana Mandiram by Bhagavan Sri Bala Saibaba Central Trust and approved the plans in B.P.No.37/93 with some usual conditions.
The same plans were approved by
the Kurnool Municipality in B.A.No.5/94/G2, Dt:09-03-1994 and construction was completed.

On verification of Street Survey records by the Town Surveyer, (Sic. Surveyor) and Revenue records by the Mandal Revenue Officer, Kurnool it is to inform that, there is no public street passing through the alleged premises in Sy.No.33 to Tungabhadra river. The Street Survey No.41 situated near Moula Miskin Darga. There is a Street No.50 road is existing on western side of the existing premises of Sri Sirdi Saibaba Temple to reach public to Tungabhadra river. On verification of F.M.B. Sketches of S.Nos.32 and 33 extract of R.S.R. and adangal for Sy. Nos.32 and 33.
The total extent of Ac.1.78 cents in S.Nos.33 is in the name of "Ramabhayamma". As per Adangal extract the S.No.33 for extent of Ac.1.78 cents in the patta of Bestha Sanjamma. The enjoyers are A. Venkata Swamy S/o. Narasimhulu with 0.34 cents, Chinna Sambaiah S/o. Narasimhulu with
0.33 cents Pedda Sambaiah Ac.0.33 cents with and Bala Saibaba with 0.78 cents. As per sanctioned Master Plan of Kurnool sanctioned in G.O. Ms.No.158 M.A. Dated:26-03-1976 there is no 60'-00" wide Master Plan road passing through S.No.33.

In view of the circumstances explained above as per Street Survey and Revenue records there is no public road/pathway is passing through the S.No.33 of Kurnool (V).
It is classified as patta land as per Revenue Records.

The appellant became aware of the aforementioned decision of the Commissioner sometime in the month of November 2002 when a copy of order dated 25-10-2002 was produced in the contempt proceedings initiated by the appellant. However, he did not bother to challenge the same for a period of almost three years. He filed Writ Petition No.21782 of 2005 on 28th September, 2005 for quashing order dated 25-10-2002 and for issuance of a mandamus to the official respondents to remove the alleged encroachment made by

respondent No.3.

Learned Single Judge dismissed the writ petition on the ground of delay and laches and also on the ground that the construction made by respondent No.3 cannot be treated as unauthorized. In the opinion of the learned Single Judge, the appellant failed to explain the delay of almost three years to challenge order dated 25-10-2002. Learned Single Judge further held that the construction had been raised by respondent No.3 after getting the building plans approved from Kurnool Municipality on 09-03-1994 and, therefore, the same cannot be termed as unauthorized.

We have heard the learned counsel for the parties and are in agreement with the learned Single Judge that the writ petition filed by the appellant was highly belated. Although, Article 226 does not prescribe any period of limitation within which a person can apply for issue of an order, direction or writ in the nature of writ of Certiorari, Habeas corpus, Mandamus, Prohibition and Quo warranto, in the last 55 years, the Superior Courts have evolved several self-imposed rules including the one that the High Courts will not entertain belated petition.

In **State of Madhya Pradesh v. Bhailal Bhai,** the Constitution Bench of the Supreme Court held that even though the provisions of the Limitation Act do not apply to the proceedings under Article 226 of the Constitution of India, a petition filed after expiry of period of limitation prescribed for filing civil suit will ordinarily be treated as belated and the relief will be denied to the petitioner, unless he is able to satisfactorily explain the cause of delay. The proposition laid down in that case reads as under:

> "The provisions of the Limitation Act do not as such apply to the granting of relief under Art.226. However, the maximum period fixed by the Legislature as the time within which the relief by a suit in a civil court must be brought may ordinarily be taken to be a reasonable standard by which delay in seeking remedy under Art.226 can be measured. The Court may consider the delay unreasonable even if it is less than the period of limitation prescribed for a civil action for the remedy but where the delay is more than this period, it will almost always be proper for the Court to hold that it is unreasonable."

After six years, another Constitution Bench of the Supreme Court in

Tilokchand Motichand v.

H.B. Munshi held that though there is no upper or lower limit for filing petition under Article 226 of the Constitution of India, the Court can decline the relief even if the petitioner approaches the Court within the period of limitation prescribed for filing civil suit. Some of the observations made in the majority judgment of that case are extracted below:

> "Utmost expedition is the sine qua non for such claims. The party aggrieved must explain satisfactorily all semblance of delay. No period can be indicated which may be regarded as the ultimate limit of action for that would be taking upon itself legislative functions. In England a period of 6 months has been provided statutorily, but that could be because there is no guaranteed remedy and the matter is one entirely of discretion. In India each case will have to be considered on its own facts. Avoidable delay affecting the merits of the claim, will disentitle a party to invoke the extraordinary jurisdiction.
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> The question is one of discretion for this Court to follow from case to case. This Court need not necessarily give the total time to the litigant to move this Court under Article 32, even though he may be within statutory limitation. Similarly in a suitable case this Court may entertain a petition even after limitation. It will all depend on what the breach of the Fundamental Right and the remedy claimed are and how the delay arose."

The aforesaid view has been approved by majority of the Larger Bench of the Supreme Court in **Mafatlal Industries v. Union of India**

If the appellant's plea is examined in the backdrop of the above propositions, we do not find any difficulty in concurring with the learned Single Judge that the writ petition filed by the appellant after almost 3 years of rejection of his representations was highly belated. As a corollary, we hold that the learned Single Judge did not commit any error by non-suiting the appellant on the ground that he is guilty of latches.

We are further of the view that the learned Single Judge did not commit any error by refusing to nullify order dated 25-10-2002 passed by the Commisioner because respondent No.3 had raised construction after obtaining permission from the competent authority and getting the building plan approved by Kurnool

Municipality. In any case, the question whether or not respondent No.3 had made encroachment on the public road cannot be adjudicated in a petition filed under Article 226 of the Constitution of India because determination of that question necessarily involves investigation into issue of facts and that exercise can properly be undertaken by a civil court.

For the reasons mentioned above, the appeal is dismissed.

G.S. SINGHVI, C.J.

Date:30-12-2005

R. SUBHASH REDDY, J

PV /svs

HONOURABLE SRI G.S. SINGHVI, THE CHIEF JUSTICE

AND

HON'BLE SRI JUSTICE R. SUBHASH REDDY

WRIT APPEAL (S.R.) No.146685 OF 2005

Between:

M. Sivaprasad, S/o. M. Venkaiah,

aged about 51years, R/o. H.No.64/43 Fort,

Near Sai Baba Temple, Kurnool,

Kurnool District.

.. Appellant

AND

The District Collector & Magistrate,

Kurnool District, Kurnool & 2 others

.. Respondents

::JUDGMENT::

Counsel for the appellant : Mr. R. Ramanjaneyulu

Counsel for Respondent No.1 : G.P. for Revenue

Counsel for Respondent No.2 : Khaja Moizuddin Krishna
S.C. for Kurnool Municipality

Counsel for Respondent No.3 : None appeared

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30th December, 2005

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